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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,813	07/31/2006	Emmanouil Domazakis	CFAV-6	6974

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/577,813	DOMAZAKIS, EMMANOUIL	
	Examiner	Art Unit	
	Lien T. Tran	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 April 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method for preparing a croissant shaped pastries. The method includes the step of preparing an emulsion by adding olive oil, dextrose, frustose and egg yolk. However, there is no teaching of how much olive oil, dextrose, fructose and egg yolk to use. The step requires homogenization in a high-speed mixer; but, there is no teaching of the parameters to carry out the homogenization. For example, how high is the speed and how long does one carry out the step? The step of preparing a liquid leaven requires inoculation of rye flour substrate with specially formulated microbial cultures. However, the specification does not teach what these microbial cultures are. How does one prepare these cultures. Step c require mixing flour and water with a quantity of the liquid leaven; however, there is no teaching of how much flour, water and liquid leaven to use. The same problem is noted with step d; there is no teaching of the amounts of flour, water, emulsion, sugar, eggs, olive oil and baker's leaven to use. It is not known what would be considered as baker's leaven; is this a chemical leavening agent or yeast or bacteria or something other thing. The specification has no teaching that shows one skilled in the art of the ingredient to use as baker's leaven. Step f requires passing the dough to a series of dough rotors; but, the specification does not teach one skilled in the art the type of rotors to use. There is absolutely no teaching of the equipment that qualifies to carry out this step. The same

problem is noted for step g. There is no disclosure to the type of equipment that can be used to carry out the step. Step j requires cooling in the presence of high microbial quality air. It is not known what kind of air would be considered as " high microbial quality air"; one skilled in the art would not know what cooling air to use to carry out the step. Step k requires placing the baked product in a modified atmosphere; but, the specification does not teach how this modified atmosphere is obtained. The specification gives a general outline of the method but does not teach the specific required parameters to carry out the method. Reading the specification, one skilled in the art would not know how to carry out the method for the reasons set forth.

In the response filed 4/26/10, applicant submits a 132 declaration to traverse the 112 enablement rejection. The rejection is maintained because the declaration is not persuasive. The declaration does not address all the issues presented in the 112 rejection. The declaration states that the term " baker's leaven" is known as baker's yeast which is a common name for the strains of yeast commonly used as a leavening agent is bread and bakery product. The specification does not disclose that baker's leaven is baker's yeast. The requirement for the specification is clear in that it must set forth the method in which one skilled in the art can readily carried out the method. Even if one were to assume that baker's leaven is baker's yeast, one still does not know how much of the yeast to use or in what condition or what kind yeast. For example, there are cream yeast, dried yeast, active yeast, inactive yeast etc.. The declaration states every person would be aware of how to make a proper dough. This statement is a conclusion that is not supported by factual evidence. There is not just one formulation

for dough so that the mention of dough would suggest to one skilled how much flour, yeast, fructose, egg yolk etc... to use. Different dough has different formulation. The amounts of ingredients used for bread dough are different for different types of bread and are different from other doughs. The specification does not have any teaching on the amounts of ingredients which are used. On page 3 of the declaration, it is stated that the combination of microbial culture would lead one to the sourdough starter. This is a conclusion that is made in the declaration. The specification does not have any disclosure that the microbial culture is a sourdough starter. Pages 4-5 make the same general conclusion about the homogenization being up to 3000rpm; however, there is no teaching in the specification that leads one skilled in the art to this parameter. The declaration does not have any evidence to show that the mention of homogenization will lead one directly to the speed of up to 3000rpm. Furthermore, up to 3000 rmp includes from 0-3000; thus, what speed is appropriate for the claimed method. Page 5 gives the same general conclusion about the amounts of ingredients for the emulsion and the equipments used. However, none of the general conclusion in the declaration is disclosed in the specification. Thus, the requirement of an enabling disclosure is not met and the rejection is maintained.

Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 2-3, what does applicant mean by direct and indirect incorporation; what would be considered as direct or indirect. Line 7, the term " high

speed" is indefinite because it is relative; what would be considered as high. Line 17, the recitation of " baker's leaven" is indefinite because it is not known what ingredient is considered baker's leaven; is it yeast, chemical leavener, bacteria or something other thing. Line 35, the recitation of " high microbial quality air" is indefinite because it is not known what kind of air would be considered as high microbial quality air.

The 112 second paragraph rejection of claim 1 is maintained with respect to the above issue. The amendment does not overcome the rejection.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dijkshoorn et al.

Dijkshoorn et al disclose a baked filled product comprising a filling enclosed inside a bread dough casing. The filling is a meat-based filling comprising cheese. The food product has an elongated shape but other shapes like cubes, balls and egg-shaped are possible as well. The bread dough comprises wheat flour, water, margarine, sugar, yeast, glucose, milk powder salt and egg yolk. (see col. 3 and example 1)

The dough product of Dijkshoorn et al differs from the claimed product in the way it is made; however, determination of patentability in product-by-product claim is based on the product itself. Dijkshoorn et al do not disclose the use of olive oil, fructose, monoglycerides and the shape of croissant.

Dijkshoorn et al disclose the use of margarine which is a source of fat. It is well known in the art to substitute margarine for butter, oil or shortening depending on the flavor, taste, nutrition desired. The selection of the type of fat used is also affected by

the cost factor and regional preference. It would have been obvious to substitute olive oil for margarine when desiring a healthier fat. It would have been obvious to select any type of sugar depending on the sweetness intensity and the flavor desired. The selection of the type of sugar would have been an obvious matter of preference. It would have been obvious to add a well known emulsifier such as monoglyceride to give softness to the product. This additive is well known to be used for such purpose. Using an additive for its art-recognized function would have been obvious to one skilled in the art. It would have been obvious to form the product in any shape desired; this would have been an obvious matter of preference.

Claim 1 is free of prior art because there is no teaching of the sequence of steps as claimed. Specifically, there is no teaching of the steps of forming an emulsion, forming a liquid leaven and maturing the dough filled with meat.

In the response filed 4/26/10, applicant traverses the rejection of claim 2. Applicant states that the intermediate layer in Dijkoorn is compared with the emulsion of claim 1. It is believed applicant misinterpreted the rejection. In evaluating claim 2 for prior art application, the processing steps by which the product is made are not considered. The intermediate layer is not compared to the emulsion because the step of preparing the emulsion is a difference in processing not in the product made. The product as claimed in claim 2 is a dough pastry product comprising olive oil, dextrose, fructose,egg yolk, flour, sugar, water, eggs and baker leaven. The bread dough of Dijkoorn comprises flour, water, margarine, sugar, yeast, syrup, egg powder. The substitution of margarine for olive oil for healthy reason would have been obvious to one

skilled in the art. Applicant points out the differences between olive oil and margarine. The differences between olive oil and margarine are known fact and it is precisely these differences that the substitution of olive oil for margarine would have been obvious to one skilled in the art. Margarine contains trans-fat; one would have been motivated to substitute margarine for olive to obtain a product without the unhealthy trans-fat. The difference in direct addition and indirect addition is in the processing which does not determine the patentability of the product. The argument concerning the challenge of replacing margarine with olive oil is not supported by factual evidence and the claims do not place any limitation on the amount of oil.

Applicant's arguments filed 4/26/10 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 8, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1781